

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Gordon Wagner,
Complainant

**FINDING OF NO PROBABLE CAUSE,
ORDER OF DISMISSAL**

v.

Representative Bud Heidgerken,
Respondent

On September 28, 2004, Complainant filed a complaint with the Office of Administrative Hearings alleging a violation of Minn. Stat. Chap. 211B.04 by Respondent. On September 29, 2004, the Notice of Determination of Prima Facie Violation and Notice of and Order for Probable Cause Hearing was issued.

The above-entitled matter came on for a probable cause hearing as provided by Minn. Stat. § 211B.34, before Administrative Law Judge Beverly Jones Heydinger. The hearing was held by telephone on October 1, 2004, at approximately 10:30 a.m.

Gordon Wagner, 128 2nd Avenue South, P.O. Box 68, Glenwood, MN 56334 ("Complainant"), appeared on his own behalf. Representative Bud Heidgerken ("Respondent"), 316 Second Avenue North, P.O. Box 116, Freeport, MN 56331, appeared on his own behalf. In addition, David Colling, 3057 Tyler Street, Minneapolis, MN 55418, and Jeanne Danaher, 461 State Office Building, 100 Rev. Dr. Martin Luther King, Jr., Blvd., Saint Paul, MN 55155-1298, attended the hearing by telephone.

During the telephone conference, the Complainant and Respondent gave sworn testimony, and the record was supplemented with two exhibits, Exhibits B and C. The parties agreed that, in the event that an evidentiary hearing was required, there was no additional evidence to be offered, and the record was complete.

Based upon the record and all of the proceedings in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On or about July 16, 2004, the Respondent mailed a 2004 Legislative Report to his constituents. The report was printed newspaper-style and the Respondent's name appeared in large letters at the top. The first page of the report included a letter from the Respondent, with his name, address and telephone number. His office and home address, telephone numbers and e-mail address are printed in a box on the last page.^[1] Copies of the Report were available at the Pope County Fair during the last week of July.^[2]

2. On or about July 26, 2004, the Respondent discovered that his Legislative Report did not include a disclaimer that it had been paid for by the Heidgerken Volunteer Committee. After discovering the error, Rep. Heidgerken hand-stamped remaining copies of the report with the disclaimer.^[3] The Respondent immediately reported the oversight to the Campaign Finance and Public Disclosure Board, the Secretary of State's Office, and to OAH. On or about July 26, 2004 the Respondent submitted a letter to seven local newspapers acknowledging the disclaimer omission: the Sauk Centre Herald, Melrose Beacon, Albany Enterprise, Belgrade Observer, Pope County Tribune, Starbuck Times and Bonanza Valley Voice.^[4]

3. The Respondent's letter stated: "In the last couple of days, some of you may have received my legislative wrap-up. The staff that put it together, the printer, and myself had not noticed that a disclaimer was missing. It is important for you to know that it was paid for by the Heidgerken Volunteer Committee, Box 116, Freeport, MN 56331 and not the State of Minnesota. My apologies, [signed by] Bud Heidgerken, State Representative, District 13A."

4. The letter was printed in the Bonanza Valley Voice.^[5] The Respondent did not know if the other papers had printed the letter.^[6]

5. Rep. Heidgerken is not certain how the disclaimer was omitted from the report. He believes that the disclaimer was in the envelope when the material was sent to the printer.^[7]

6. The expense for the printing is reflected on the report of the Principal Campaign Committee filed with the Campaign Finance and Public Disclosure Board for the period January 1 through August 23, 2004.^[8] The invoice from the printer is directed to the Heidgerken Volunteer Committee.^[9]

Conclusions of Law

1. The Administrative Law Judge has jurisdiction to consider this matter pursuant to Minn. Stat. § 211B.34.

2. "Campaign material" means "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by news media."^[10] There is probable cause to believe that the Legislative Report is "campaign material".

3. Campaign material must "prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in [Minn. Stat. §211B.04, subd. (b) or (c)]".^[11]

4. The Respondent substantially complied with the requirement in Minn. Stat. §211B.04 by prominently displaying his name and address on the campaign material, by adding a disclaimer to the copies in his possession, and by promptly issuing a

clarification of who had paid for the campaign material. The Complainant has failed to show probable cause that a violation of the disclaimer requirement occurred.

Based on the Findings of Fact and Conclusions of Law, and for the reasons set forth in the Memorandum, attached hereto and incorporated herein:

Order

IT IS HEREBY ORDERED THAT:

1. There is no probable cause to believe that Respondent violated Minn. Stat. § 211B.04 as alleged in the Complaint;
2. The Complaint is DISMISSED.

Dated: October 5, 2004

S/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

NOTICE OF RECONSIDERATION RIGHTS

Minnesota Statute § 211B.34, subdivision 3 provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two business days after this dismissal.

If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under section 211B.35 within five business days after granting the petition.

MEMORANDUM

Respondent is the current state representative from District 13A. In July 2004, he mailed a four-page report summarizing his activities during the 2004 Legislative Session. The report highlighted the Respondent's efforts and achievements. Such a publication is intended to educate and influence voters. Placing the evidence in a light most favorable to the Complainant, there is probable cause to believe that the report is "campaign material."

"Campaign material" must prominently include the name and address of the person or committee causing the material to be prepared. In this case, the Respondent's name is prominently displayed across the top of the document, and his

name, address and telephone number also appear on the first page. His name, position and picture are repeated throughout the four pages. The last page contains biographical information about the Respondent, and, in a box at the bottom of the page, includes contact information with Respondent's home and Capitol office addresses and telephone numbers, as well as an e-mail address.

It is obvious that this publication was sent by Rep. Heidgerken. The entire report addresses his background, positions, legislative assignments and actions. No reasonable person could conclude otherwise.

The statute requires that the identification of the responsible person or committee "substantially comply" with the following language: "Prepared and paid for by the ...committee,...(address)" for material prepared and paid for by a principal campaign committee."^[12] The Respondent admits that the campaign material was paid for by the Heidgerken Volunteer Committee, and that the precise language was not included. It is also clear that this was an oversight, and that the Respondent took steps immediately, within days of publication and more than two months before the Complaint was filed, to rectify the mistake and notify his constituents that his campaign committee had paid for the publication.

Placing the evidence in a light most favorable to the Complainant, as is required at the probable cause stage of the proceeding, it is apparent that the Respondent substantially complied with the disclaimer requirement. Because the report prominently features the Respondent's name and address, and the Respondent took immediate action to add the omitted disclaimer to remaining copies of the publication and notify the public that his volunteer committee had paid for the Legislative Report, the Respondent has substantially complied with the disclaimer requirement.

Also, it is important that there could be no reasonable confusion about the source of the Legislative Report. Anyone seeking to contact the source had the name, address, telephone number, and e-mail address of the Respondent. His home address is identical to the address of the principal campaign committee.

Thus, when the evidence is placed in a light most favorable to the Complainant, there is no probable cause to believe that a violation occurred.

B.J.H.

^[1] The Legislative Report was attached to the Complaint, and is also a part of Exhibit B.

^[2] Testimony of Gordon Wagner.

^[3] Ex. B.

^[4] Ex. B.

^[5] A copy was attached to the Complaint.

^[6] Test. of Bud Heidgerken.

^[7] Ex. B; Test. of Bud Heidgerken.

^[8] The report is attached to the Complaint.

^[9] Ex. C.

^[10] Minn. Stat. § 211B.01, subd. 2.

^[11] Minn. Stat. § 211B.04 (a) (emphasis added).

^[12] Minn. Stat. § 211B.04 (b).